

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MAYOR AND CITY COUNCIL OF)
BALTIMORE,)
Plaintiff)
v.) Civil Action No. 18-cv-3636 (ELH)
JOSEPH R. BIDEN JR., President, et al.)
Defendants)

**JOINT STATUS REPORT IN RESPONSE TO AUGUST 18, 2021, ORDER AND
DEFENDANTS' UNOPPOSED MOTION TO STAY PROCEEDINGS**

The parties are filing this joint status report in response to the Court's August 18, 2021, Order, ECF No. 163, which granted the defendants' request for a further stay of proceedings and called for a status report by November 16, 2021. The defendants request that the Court extend the stay of proceedings for 90 days (to February 14, 2022) as discussed further below.

In this action, plaintiff Mayor and City Council of Baltimore, Maryland, challenges two actions of the Department of State that relate to the "public charge" provision of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4)(A): (1) revisions made in January 2018 to a section of the Department of State Foreign Affairs Manual, 9 FAM § 302.8, and (2) an October 2019 interim final rule, Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. Reg. 54,996 (Oct. 11, 2019) (codified at 22 C.F.R. § 40.41). Neither of the challenged actions is currently being applied. The January 2018 guidance was superseded by new guidance reflecting the October 2019 rule and is no longer in use. The U.S. District Court for the Southern District of New York entered a preliminary injunction barring enforcement of both of the challenged actions in July 2020. *See Make the Road N.Y. v. Pompeo*, 475 F. Supp. 3d 232, 271 (S.D.N.Y. 2020). The defendants filed an appeal from the July 2020 preliminary injunction, but the parties stipulated to

dismissal of the appeal. *See* Mandate, *Make the Road N.Y. v. Pompeo*, Docket No. 20-3214 (S.D.N.Y. July 6, 2021), ECF No. 118.

The defendants previously advised the Court that, on February 2, 2021, the President issued an Executive Order calling for the Secretary of State to review agency actions related to implementation of the public charge ground of inadmissibility. Exec. Order No. 14,012, 86 Fed. Reg. 8277 (Feb. 2, 2021), <https://www.govinfo.gov/app/details/FR-2021-02-05/2021-02563>.

In light of changed circumstances since the publication of the October 2019 rule, the Department of State intends to publish a notice in the Federal Register soliciting additional information from the public and reopening the comment period for 60 days. The notice has been posted for public inspection and is scheduled to be published tomorrow, November 17, 2021. *See* Visas: Ineligibility Based on Public Charge Grounds (to be published Nov. 17, 2021), <https://www.federalregister.gov/public-inspection/2021-25038/visas-ineligibility-based-on-public-charge-grounds>.

In light of the Executive Order, the review the Department of State is conducting under the Order, and the further anticipated action described above, the defendants request that the Court extend the stay of proceedings for 90 days (to February 14, 2022). The plaintiffs do not oppose the request if the Court provides for the stay to expire automatically in the event that the preliminary injunction in *Make the Road New York* is lifted. The defendants do not object to that condition.

A proposed order is attached.

Date: November 16, 2021

Respectfully submitted,

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